

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 266/2001

THIS THE 17th DAY OF APRIL, 2002

Date of Decision: 17.04.2002

Mahabal Padmashali.

Applicant(s)

Shri Ramesh.

Advocate for applicant

Versus

Union of India & others

Respondents

Shri C.M. Jha.

Advocate for Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? x
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 266/2001

THIS THE 17TH DAY OF APRIL, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY . MEMBER (A)

Mahabal Padmashali,
lastly working as Chief
Catering Inspector,
Western Railway,
Mumbai Central,
Mumbai-400 008.

... Applicant

By Advocate Shri Ramesh.

Versus

1. Union of India
through the General manager,
Western Railway,
Churchgate, Mumbai-400 020.
2. The Chief Commercial Manager,
Western Railway,
Churchgate, Mumbai-400 020.
3. The Sr. Personnel Officer (G),
Western Railway,
Churchgate, Mumbai-400 020. ... Respondents

By Advocate Shri C.M. Jha.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. Member (A)

This application is filed by the applicant for seeking post retirement passes from the Railways. According to the applicant, he has been orally informed that one set of post retirement passes have been deducted for every month of alleged unauthorised occupation of official quarters beyond the permissible period.

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2. The applicant was last working as Chief Catering Inspector at Mumbai Central of Western Railway. He retired on superannuation with effect from 31.10.1997. At the time of his retirement, he was in occupation of the Railway quarter No.157/2 at Santacruz, Mumbai. In the year 1998 the applicant had filed OA 352/98 for counting his services as Commission Vendor as qualified service for pensionary benefits. The OA was allowed on 01.02.2000. A further direction was given that his gratuity would be paid after he vacates the quarter. Thereafter, the applicant made an application on 17.11.2000 for issue of first class post retirement pass from Mumbai to Mangalore and back, to the Commercial Branch of Western Railway. He was not issued any pass as requested in the application. He kept enquiring about the same. He was informed that due to his over stay in the Railway quarters beyond the permissible period one set of post retirement passes has been deducted for every month of alleged unauthorised occupation and therefore, he would not get any post retirement passes for about seven to eight years. This was orally informed and not in writing. The applicant sent a legal notice on 02.02.2001 through his advocate, but no reply was received to the notice.

3. The applicant had contended that it has been held in a number of judgments including the Full Bench judgment in Wazir Chand that post retirement passes of

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Railway servant cannot be withheld after he has vacated the railway quarter. Nor the railway can adjust any passes for the period of alleged over stay against future issue of passes. This ratio has been followed in OA 972/96 decided by this Tribunal. Since the applicant has vacated the quarter on 10.4.2000, according to the applicant, he ought to have been issued the passes. The applicant submits that the non-issue of post retirement passes without notice is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India apart from being in total violation of principles of natural justice and therefore, the action of the respondents in denying him the passes deserves to be struckdown.

4. According to the applicant, there is no nexus between the non-vacation of railway quarter and the issue of post retirement complementary passes. The applicant cannot be punished many time for the same reason. The respondents withheld his gratuity also issued notice for recovery of damages. The Railways give post retirement passes to its employee for his service in the railways. Therefore, something done beyond the age of superannuation cannot be used to curtail the rights and privileges accruing to a railway employee on account of his actual service in railways upto the age of superannuation.

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5. The respondents have filed their statement and submit that the applicant was issued with a show cause notice on 13.7.98 informing him that if he over stays in the quarter allotted to him and if he does not vacate the quarters he will be liable to pay damages. A further notice was issued to the applicant whereby he was informed that he shall not be entitled to any complementary railway passes if he did not vacate the quarter. A final notice was also issued on 22.9.98. The applicant had replied to the first notice of 13.7.98. however, the respondents had not passed any formal order thereafter. The reason stated by the respondents is one set of post retirement pass is deducted for every month of alleged unauthorised occupation in terms of amendment to Schedule IV (Post retirement complementary pass) of the railway servant (Pass rule) 1986. This amendment has been carried out on 08.11.1999. The respondents submit that they did not receive any legal notice although it is correct that the applicant's application for issue of post retirement pass was rejected on the ground that he was in unauthorised occupation of the railway quarter beyond the permissible period of 21 months and the notice of the same was already given to him vide letter dated 13th April, 1998. In the written statement, it has been stated the Full Bench judgment of Wazir Chand Vs. Union of India and the Tribunal's order in OA 972/96 are not applicable in the applicant's case. According to the

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learned counsel for the respondents, in the Full Bench case, no show cause notice has been issued to the applicant therein. Whereas, in the present case a proper show cause notice has been issued to the applicant on 19.8.98. Therefore, no further notice or orders were required to be issued in the matter.

6. We have heard the learned counsel for the applicant as well as the respondents and have given careful consideration to the submissions made. Principles of natural justice demands that a proper show cause notice is required to be issued before ordering any damages for unauthorised occupation. Further a proper order is required to be passed after the final notice is issued and the applicant is given liberty to represent. In the present case, we find that though the respondents issued first notice to the applicant on 19.8.98 in regard to non-availability of complementary railway pass on failure to vacate the government quarters and the applicant had represented and has requested for a sympathetic consideration on the ground of sickness to allow him to retain the quarter, no final order appears to have been passed in this case. While the respondents may be justified in withholding complementary pass till he vacated the quarters, we do not see any reason as to why the applicant should be denied the pass after he has vacated the quarter. We have perused the Full Bench judgment in the case of

Wazir Chand Vs. Union of India 1996 (32) ATC 370. The issue before the Full Bench was whether the Railway Administration can withhold the entire amount of gratuity so long as the railway servant does not vacate the railway quarter and whether the passes can be withheld according to instructions contained in Railway Board's letter dated 25.4.82 wherein it was stated that for every one month of alleged unauthorised retention of railway quarter one set of post retirement passes is disallowed. A show cause notice to this effect may be issued to a retired employee before withholding the pass. The Full Bench held that withholding of entire amount of gratuity of retired railway servant so long as he does not vacate the railway quarter is legally impermissible. Similarly disallowing one set of post retirement passes for every month of alleged unauthorised retention of railway quarter is unwarranted. The circular of 25.4.82 has been held to be ultravires and unsustainable. In view of this also it is not correct on the part of the Railways to deny the post retirement complementary passes to the applicant on the ground of retention of the quarter beyond the permissible period even after the applicant has vacated the quarter on 10.4.2000. In our considered view, it would not be proper to de-bar the applicant from getting complementary passes on the basis of his unauthorised occupation upto a particular period. Once the quarter is vacated, he should be entitled for future passes.

The respondents cannot deny the post retirement complementary passes on the ground of unauthorised occupation of the quarters allotted to him in the past. We therefore hold that the applicant is entitled to the post retirement complementary passes. The respondents are therefore directed to issue the post retirement complementary railway passes to the applicant for the year 2002 onwards when he applies according to rules.

7. In the result, the OA is allowed. No costs.

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(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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dr 17/4/2
~~Order~~ despatched
to Applicant/Respondent (s)
24/4/2

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